134 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

CAlifornians for Renewable Energy, Inc. Docket No. EL10-84-002

v.

Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and the California Public Utilities Commission

ORDER DENYING REHEARING

(Issued March 17, 2011)

1. On January 28, 2011, the Commission issued an order[1] denying a complaint filed by CAlifornians for Renewable Energy, Inc. (CARE) against Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SoCal Edison), San Diego Gas & Electric Company (SDG&E), and the California Public Utilities Commission (CPUC) (collectively, Respondents). On February 28, 2011, CARE filed a request for rehearing and motion for clarification of the January 28 Order. The CARE filing also included a "petition to commence enforcement action against the CPUC." For the reasons discussed below, the request for rehearing, motion for clarification and petition for enforcement action are denied.[2]

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[1] *CAlifornians for Renewable Energy, Inc. v. Pacific Gas and Electric Co., Southern California Edison Co., San Diego Gas & Electric Co. and the California Public Utilities Commission*, 134 FERC ¶ 61,060 (2011) (January 28 Order).

[2] On March 11, 2011, Commissioner Cheryl A. La Fleur issued a memorandum to the file in sixty dockets, including Docket No. EL10-84-002, documenting her decision, based on a memorandum from the Office of General Counsel's General and Administrative Law section, dated February 18, 2011, not to recuse herself from considering matters in those dockets.

I. Background

2. CARE filed a Complaint against PG&E, SoCal Edison, SDG&E, and the CPUC claiming, among other things, that Respondents had conspired to violate the Federal Power Act (FPA) by approving contracts establishing rates for capacity and energy that exceeds the utilities' avoided cost cap and which also usurps the Commission's exclusive jurisdiction to determine wholesale rates.[3] CARE also argued that the CPUC-approved Renewable Portfolio Standard (RPS) projects that are already online, and that are under development with project names and CPUC website links to CPUC resolutions approving or rejecting the project, should be reviewed by the Commission for compliance with the FPA.[4]

3. CARE subsequently filed an Amended Complaint, in which it objected to a proposed settlement[5] then being considered by the CPUC.[6] CARE argued that the proposed settlement intentionally sought to avoid the Commission's review of the settlement before the CPUC approves it, and that CARE had no opportunity to meaningfully participate in the CPUC process.[7]

4. In its January 28 Order, the Commission dismissed both the original Complaint and the Amended Complaint, explaining that CARE had failed to provide any factual support for the allegations made as required by Rule 206 of the Commission's Rules of Practice and Procedure and had similarly failed to submit a pleading that met the Commission's filing requirements contained in Rule 203.[8]

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[3] Complaint at 1.

[4] *Id.* at 8.

[5] "According to the parties to the proposed settlement, the proposed settlement resolves numerous qualifying facility (QF)-related disputes and is the result of more than a year and a half of settlement negotiations." CPUC November 4, 2010 Answer at 3-4. The proposed settlement does not pertain to the CPUC's approval of any purchase power agreements (PPA).

[6] CARE October 20, 2010 Amended Complaint at 2.

[7] *Id.* at 5.

[8] January 28 Order, 134 FERC ¶ 61,060 at P 2, 54-64.

II. Discussion

A. Procedural Matters

5. On March 8, 2011, Solutions for Utilities, Inc. (SFUI) filed an untimely motion to intervene. In its motion, SFUI claims that it was not aware of the proceeding until February 23, 2011. SFUI seeks party status in order to file an enforcement action under Section 210 (h) of the Public Utility Regulatory Policies Act of 1978 (PURPA).[9] SFUI also states that it is filing in order to support CARE's request for rehearing. On March 11, 2011, SFUI filed a petition for enforcement, in the instant docket, pursuant to Section 210 (h) of PURPA.

6. We deny SFUI's motion to intervene. Parties seeking to intervene after issuance of the Commission's determination in a proceeding bear a heavy burden. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, the movant bears a higher burden to demonstrate good cause for the granting of such late intervention.[10] SFUI has not met its burden justifying late intervention. Furthermore, Rule 713(d) of the Commission's Rules of Practice and Procedure prohibits an answer to a request for rehearing..[11]

B. Decision

7. CARE raises the following issues on rehearing: CARE contends that it clearly alleged that the CPUC-approved contracts and settlement agreement do not meet the standards applicable under PURPA. Furthermore, CARE disputes that it failed to: (1) identify the action or inaction that violated applicable statutory standards; (2) provide evidence supporting its claim of a conspiracy; (3) provide evidence that the CPUC approved PPAs exceed the avoided cost rate; (4) provide evidence that the PPAs are unjust and unreasonable; and (5) provide evidence concerning the RPS contracts it found objectionable. Finally, CARE contends that the Commission failed to offer a detailed review and discussion of the proffered evidence.

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[9] 16 U.S.C. § 824a-3(h) (2006).

[10] *See, e.g., Bridgeport Energy,* 114 FERC ¶ 61,265 (2006); *American Electric Power Service Corp.,* 111 FERC ¶ 61, 372 (2005); *Midwest Independent Transmission System Operator, Inc.,* 102 FERC ¶ 61, 250 (2003); *Pacific Gas & Electric Co.,* 100 FERC ¶ 61,097 (2002).

[11] 18 C.F.R. § 385.713(d) (2010) and § 385.213(a)(2)(2010).

8. We will deny rehearing. CARE's Request for Rehearing suffers from the same deficiencies as its Complaint and Amended Complaint. CARE raises no new arguments regarding the issues and simply reiterates arguments the Commission has previously considered and rejected. The only "evidence" CARE proffered to support its objections to the CPUC approved PPAs, other than two CPUC orders, was a list of PPAs which is available on the CPUC's website. Similarly, CARE's "evidence" regarding the CPUC-approved RPS contracts is simply a website link to the approved projects. CARE fails to provide any analysis of the PPAs or RPS projects and fails to specify how each violates either the FPA or PURPA.[12]

9. As noted in the January 28 Order, Rule 203 requires that all pleadings contain the "relevant facts," and the "position taken by the participant . . . and the basis in fact and law for such position."[13] Similarly, Rule 206 requires complainants to "[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements [and] [e]xplain how the action or inaction violates applicable statutory standards regulatory requirements."[14] Such information is essential both to the Commission according due process to the Respondents, who are entitled to respond to claims made and evidence presented against them, and to the Commission's weighing competing claims and evidence against the relevant statutory and regulatory standards and the Commission's precedent and policies in arriving at a fair and reasonable resolution.

10. CARE's original filings failed, and its current filing once again fails, to meet even this basic standard.[15] CARE provides no legal argument correlating the "facts" alleged to any legal standard or violation of the law, and fails to identify any action or inaction by the parties which would violate statutory standards or regulatory requirements. In the past, we have admonished parties, and we have admonished CARE especially, that

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[12] The January 28 Order also expressly noted that, while CARE had claimed that the contracts approved by the CPUC had rates that exceeded an avoided cost rate, CARE did not provide any support for this allegation. January 28 Order, 134 FERC ¶ 61,060 at P 57.

[13] January 28 Order, 134 FERC ¶ 61,060 at P 54, citing 18 C.F.R. § 385.203(a) (2010).

[14] *Id.*, (citing 18 C.F.R. § 385.206(b) (2010)).

[15] While CARE reiterates several times in its rehearing request that they are non-attorneys, we note that the Commission's rules provide procedures for orderly proceedings and they apply regardless of whether a party is represented by counsel or not, in order for the proceedings to be fair and comport with due process.

"rather than bald allegations, [complaining parties] must make an adequate proffer of evidence including pertinent information and analysis to support its claims."[16] CARE provided no evidence supporting its claims, and on rehearing simply repeats arguments previously addressed and rejected by this Commission. CARE's complaints, pleadings, statements therein, as well as the instant request for rehearing, again reflect a failure to follow the Commission's regulations and the guidance provided in earlier orders.[17]

11. CARE also asks the Commission to clarify what the "meaningful standards" are under PURPA and the FPA. And CARE asks the Commission to clarify its authority over utility contracts whose rates exceed avoided costs as well clarify what "meaningful standards" should be applied to measure those contract for compliance with the FPA and PURPA. We deny CARE's request.[18] At the outset, we would need to know the information that, as we stated in the January 28 Order and repeat above, CARE has not

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[16] *Illinois Municipal Electric Agency v. Central Ill. Pub. Serv. Co.*, 76 FERC ¶ 61,084, at 61,482 (1996).

[17] A vast majority of the complaints filed by CARE have been dismissed for failure to comply with the Commission's rules and standards. *See, e.g., Californians for Renewable Energy, Inc. v. California Pub. Utils. Comm'n*, 120 FERC ¶ 61,272 (2007) (dismissing two CARE complaints); *CAlifornians for Renewable Energy, Inc. v. California Pub. Utils. Comm'n*, 119 FERC ¶ 61,058 (2007) (dismissing two CARE complaints); *CAlifornians for Renewable Energy, Inc. v. California Indep. Sys. Operator Corp.*, 117 FERC ¶ 61,072 (2006); *CAlifornians for Renewable Energy, Inc. v. Calpine Energy Servs., L.P.*, 106 FERC ¶ 61,055 (2004), *reh'g denied*, 107 FERC ¶ 61,238 (2004); *CAlifornians for Renewable Energy, Inc. v. British Columbia Hydro and Power Auth.*, 98 FERC ¶ 61,085 (2002); *CAlifornians for Renewable Energy, Inc. v. Indep. Energy Producers, Inc.*, 93 FERC ¶ 61,294 (2000).

[18] On November 19, 2010, January 22, 2011, and January 26, 2011, CARE filed motions to provide additional information. In these motions CARE failed to provide any analysis of the proffered information or explain how the additional information supported its arguments. CARE failed to justify its motions to provide additional information and we therefore deny those motions. On December 27, 2010, CARE filed a motion for procedural guidance. In this motion CARE appears to be seeking legal advice regarding how to pursue its claims. It would be inappropriate for the Commission to offer the kind of detailed legal advice to parties appearing before us as to how to practice before us. We further note that our orders in this and other proceedings have pointed CARE to the regulations that CARE should follow in preparing its pleadings, such as Rules 203 and 206 of our Rules of Practice and Procedure, 18 C.F.R. §§ 385.203, 385.206 (2010), and so as a general matter we have already provided guidance to CARE. For this reason, we deny CARE's motion for procedural guidance.

provided in order to be able to discuss particular statutory and regulatory standards and how they apply to particular factual circumstances – CARE's failure is precisely why we could not and did not say more in our earlier order and similarly why we cannot and need not say more than we already have here. That aside, we also note that CARE has not requested that we clarify any determination rendered in the January 28 Order. Essentially, CARE is requesting an advisory opinion, and requesting that opinion on a record that is lacking in the elements we would need to know to address matters arising under the FPA and PURPA (other than our speaking in the broadest terms, which we, in fact, did in the January 28 Order). As a general proposition, the Commission does not render advisory opinions,[19] and certainly cannot render its views on questions and on a record that are ill-defined. Nor can our regulations governing rehearing be treated as an invitation for parties to request that the Commission expound, in the abstract, upon its general authority.[20] Moreover, the applicability of many of our laws and regulations often depends upon the specific factual situation.

12. Finally, with regard to CARE's petition for enforcement action, we find that the inclusion of a petition for enforcement in a request for rehearing is inappropriate as a matter of procedure and violates the due process rights of any potential respondent; respondents are not allowed to file answers to requests for rehearing.[21] Similarly, SFUI's petition for enforcement was inappropriately filed in response to a request for rehearing. Therefore, we dismiss both SFUI's and CARE's petition for an enforcement action.

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[19] *Western Grid Development, LLC*, 130 FERC ¶ 61,056, at P 111 (2010).

[20] 18 C.F.R. § 385.713(c) (2010) (providing that parties seeking rehearing must state concisely the alleged error in the underlying order, set forth the matters relied upon by the party, and must conform to the requirements of Rule 203(a), 18 C.F.R. § 385.203(a) (2010) – which includes identifying the relief sought by the party, the position taken by the party, and the basis in law and fact for that position).

[21] 18 C.F.R. § 385.713(d) (2010); *accord Louisiana Power & Light Company*, 50 FERC ¶ 61,040, at 61,062-63 & n.3 (1990); *Entergy Services, Inc*., 52 FERC ¶ 61,317, at 62,270 (1990); *Missouri Basin Municipal Power Agency v. Midwest Energy Company*, 55 FERC ¶ 61,464, at 62,533 (1991); *Yankee Atomic Electric Company*, 60 FERC ¶ 61,316, at 62,096-97 n.19 (1992); *Louisville Gas and Electric Company*, 62 FERC ¶ 61,016, at 61,151 (1993); *American Electric Power Service Corporation*, 90 FERC ¶ 61,040, at 61,193 & nn.13, 15 (2000).

The Commission orders:

(A) The request for rehearing and request for clarification and filed by CARE and the motion to intervene filed by SFUI are denied for the reasons set forth above.

(B) The petitions for enforcement filed by CARE and SFUI are dismissed for the reasons set forth above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.